

To: george.j.delancey@usace.army.mil[george.j.delancey@usace.army.mil]
From: Schaller, Andrea
Sent: Tue 7/1/2014 5:02:18 PM
Subject: FW: USFWS Endangered Species concern for Wheeling Bottoms (IN) Coal Permit
[Francisco mine.jpg](#)
[ongoing coal fines disposal near flat lake.jpg](#)

George,

Do you have any permits that cover this area? The emails below describe where the tern is a nesting.

Andrea

From: Pellegrini, Janet
Sent: Tuesday, July 01, 2014 10:55 AM
To: Schaller, Andrea
Cc: Cantello, Nicole; Melgin, Wendy
Subject: FW: USFWS Endangered Species concern for Wheeling Bottoms (IN) Coal Permit

Andrea,

I am pursuing the issue attached re presence of federally listed endangered species- Least Tern at this proposed coal slurry sedimentation pond, for Peabody's Francisco Mine.

Can you let me know if a determination was done whether or not the waterbody in question, Flat Lake, is a water of the US?

I am attempting to determine what basis we may have to pursue and am working with ORC's Nicole Cantello.

I will forward separate response from IDEM re the GP number for this site

Janet Pellegrini, Environmental Scientist

USEPA Region 5, Water Division, NPDES Branch

77 West Jackson Blvd. WN-16J

Chicago, IL 60604-3590

Phone: 312-886-4298

Fax: (312) 692-2436

From: Bauer, Candice
Sent: Monday, June 30, 2014 12:25 PM
To: Melgin, Wendy; Swenson, Peter; Pierard, Kevin
Cc: Pellegrini, Janet; Holst, Linda; Cantello, Nicole
Subject: USFWS Endangered Species concern for Wheeling Bottoms (IN) Coal Permit

Hello all. I got the following information from USFWS regarding potential impacts of a mining permit (for a coal slurry pond) on the endangered interior population of least terns (called ILT in email chain below). Apparently, FWS has evidence that the endangered birds are nesting on the reservoir that Indiana apparently intends (or has already) to permit to allow for coal slurry to be added to the site.

So, my questions would be: (1) whether or not EPA has a federal role in the Indiana permitting process (NPDES or SMCRA?) and (2) is the decision by Indiana is already "final". If EPA does have some role and/or review and there is still time for EPA to provide input, it would be good to discuss this internally and/or with FWS further. I do not have additional information other than what has been provided by Dan Sparks in Indiana's FWS field office, but could request additional information as necessary to help out.

If there is no EPA role or the time has already passed (or if we need more information in order to determine this), please let me know. I would like to get back to Dan to let him know the status even if we can't help out.

Candice

Candice R. Bauer, Ph.D.

EPA Region 5, Water Quality Branch (WQ-16J)

77 W. Jackson Blvd., Chicago, IL 60604

Office Phone: 312-353-2106

Fax: 312-697-2668

Hours: Monday - Friday 8:15 am to 4:15 pm

From: Daniel Sparks [mailto:daniel_sparks@fws.gov]
Sent: Monday, June 30, 2014 10:25 AM
To: Hammer, Edward; Bauer, Candice
Subject: FW: eBird Report - Wheeling Bottoms, Jun 8, 2014

Greetings!

I want to share this information with you as an FYI even though I know that there is probably nothing that can be done in relation to this commonly permitted practice. Apparently the mining company has a mining permit to handle their coal fines this way and the general mining NPDES permit does nothing to protect receiving waters from this or really any other mining activity (monitored quarterly and just a handful of constituents).

Years ago when this area was surface mined, these very deep lakes were created and they were left as an approved post-mining landuse practice. We supported this landuse practice because it provides wildlife habitat. They are used by fish, eagles, whooping cranes and now federally listed interior least terns. It is really disappointing in hindsight to find out that they were really preplanned to be future coal fine disposal sites. These aquatic habitats are annually flooded by the Patoka River and are full of aquatic life. You can see from my attached snap shots from Google earth the overall lay of the Francisco mining operation and one or two graying up lakes where coal fine disposal is ongoing (aerial photo from March of this year).

The federal endangered terns have taken up nesting on Flat Lake where coal fine disposal is supposed to start shortly. It would seem to me that some aspects of the Clean Water Act ought to apply, if not protecting these "isolated, man-made" habitats against degradation and filling, perhaps the obvious mortality of aquatic life in these graying ponds. Next winter when this entire area is underwater for several weeks to months, and the Patoka River fish community will continue be impacted by these permitted practices.

What follows are a few emails among those involved in managing and protecting terns in Indiana for background and perspective.

Would you please consider sharing this information with your colleagues and management to let them know that endangered species are being impacted by practices that have the appearance (if not the form) of violations of the Clean Water Act?

We and the terns would be very grateful.

Thanks, Dan

Daniel W. Sparks

Senior Environmental Contaminant Specialist

US Fish and Wildlife Service

620 S. Walker St.

Bloomington, IN 47403

(812) 334-4261, x. 1 219

(812) 334-4273 (fax)

From: McCoy, Bill [mailto:bill_mccoy@fws.gov]

Sent: Monday, June 09, 2014 11:41 AM

To: Lori Pruitt; Daniel Sparks

Subject: Fwd: eBird Report - Wheeling Bottoms, Jun 8, 2014

Hi Lori and Dan,

Interesting report from Lee Sterrenburg concerning ILTs at the Flat Lake created by Peabody Energy as part of their strip mine reclamation just east of C.R. Road 550E. This is part of the refuge acquisition area. Heath observed the ILTs earlier foraging in the Wheeling Bottoms but

this sighting would indicate potential nesting. The lake shore area is also frequented throughout the winter by a pair of whooping cranes and upwards of 10,000 snow geese and many species of ducks.

This lake is scheduled to be used as a coal slurry deposition lake from the existing underground mining operations. Peabody is planning to push up a levee around the east end of Flat Lake to keep out Patoka River floodwaters. We just attended and testified at a hearing regarding the Div. of Reclamation's plans to approve Peabody's new mining permit which included the news that all (5) reclamation lakes left as incised last cut pits will be utilized to dispose of coal slurry from their nearby Francisco underground mine. I just received a certified letter from the DOR saying they had considered all the testimony and the permit was being issued.

Could verified nesting by ILTs make any difference in permitting the use of this lake for coal slurry deposition?

Bill

----- Forwarded message -----

From: **Lee Sterrenburg** <sterren@indiana.edu>

Date: Mon, Jun 9, 2014 at 5:22 AM

Subject: Fwd: eBird Report - Wheeling Bottoms, Jun 8, 2014

To: Amy Kearns <greenpertplus@hotmail.com>, Chuck Mills <ccmills8600@gmail.com>

Cc: Heath Hamilton <Heath_Hamilton@fws.gov>, Bill McCoy <bill_mccoy@fws.gov>

Leas Terns in the Wheeling Bottoms. I'll post this later on in-bird-l but am sending it now to a few people interested in LETE.

--Lee

Begin forwarded message:

From: do-not-reply@ebird.org

Date: June 8, 2014 6:36:50 PM EDT

To: sterren@indiana.edu

Subject: eBird Report - Wheeling Bottoms, Jun 8, 2014

Wheeling Bottoms, Gibson, US-IN

Jun 8, 2014 9:15 AM - 9:55 AM

Protocol: Traveling

2.6 mile(s)

Comments: With Kathy McClain. Driving north on CR 650 E from 50 N, then west one mile on CR 160 N to CR 550 E. Main stop was the big pond west of CR 650

12 species

Mallard 6

Blue-winged Teal 2 both males

Northern Bobwhite 2 a pair

Black-necked Stilt 7 3 pairs and a lone bird

Killdeer 10

Least Tern 3 small dainty terns often flying and foraging together. White bodies and wings with black outer primaries, black caps with white foreheads, yellow bills. One of the three carried a small fish for over one minute. We did not see if it made a delivery with the fish. All three Terns the same size. Usually over the big pond but one also visited the flooded field habitat east of CR 650 E

Black Tern 1 in alternate plumage

Mourning Dove 6

Chimney Swift 1

Horned Lark 6

Common Yellowthroat 3

Dickcissel 4

View this checklist online at <http://ebird.org/ebird/view/checklist?subID=S18732038>

This report was generated automatically by eBird v3 (<http://ebird.org>)

----- Fwd: Least Tern Report: June 27, 2014;
Fri 6/27/2014 2:51 PM

Hi Lori and Dan,

See Chuck Mill's report about the nice size colony of ILTs on Peabody's Flat Lake within the refuge acquisition area. I'll send pictures.

I understand there is going to be a meeting next week concerning the situation with Peabody planning to use the lake as a coal slurry sediment basin.

I talked with a neighbor Bill Johnson today who fishes that lake and saw it before it filled with river water. He said it has a nice flat level shoreline but about 10 feet out in some places there is a straight highwall dropoff all the way down to where the coal seam had been removed. That's probably over 100 feet deep since the coal got too deep to continue mining using surface techniques.

Bill J. said it was full of every kind of fish that occurred in the Patoka River since it floods every year to the point you can't tell there is a lake basin present as everything is under water. That means there are paddlefish in the lake just like at Columbia.

Prior to mining there was a court ditch draining the area running to the east into the Patoka River. This ditch was dug up as part of the lake and now serves as the conduit for lake waters in the northeast corner going to the Patoka River. Bill J. said earlier this spring he was there fishing. The ditch water was black with carp minnows and every kind of fish was there eating the minnows. That abundant minnow population is probably what helped attract the terns along with the wide, flat, barren shoreline.

Peabody has secured an easement to construct a sediment basin at this Northeast corner of the lake so that the slurry water will have a resident time of 10-hours before running off into the Patoka River. According to Bill J. the area is already surveyed with flagging for construction to start.

If the lake receives coal slurry, all the fish are doomed in the lake basin. Peabody will need to

build a large earthen dike to keep the river flood waters from inundating the lake basin. Any contaminants or suspended solids in the coal slurry will kill the fish in the lake basin and contaminate any fish surviving in the sediment basin.

If there was ever a time to make a case to protect habitat for endangered species, this is a good example as it affects both the interior least terns, trumpeter swans, whooping cranes and paddlefish using the immediate area.

Bill

----- Forwarded message -----

From: **Chuck Mills** <ccmills@wowway.com>

Date: Fri, Jun 27, 2014 at 1:07 PM

Subject: Least Tern Report: June 27, 2014

To: John Castrale <jcastrale@dnr.in.gov>, Amy Kearns <greenpertplus@hotmail.com>, "Kenneth J. Brock" <kj.brock@comcast.net>, sjohnson@dnr.in.gov, sterren@indiana.edu, rbriggeman@dnr.in.gov, John Pike <john.pike@duke-energy.com>, "Cooksey, Pam" <Pam.Cooksey@duke-energy.com>, "Pruitt, Lori" <lori_pruitt@fws.gov>, rebecca.sparks@duke-energy.com, Bill McCoy <bill_mccoy@fws.gov>, heath_hamilton@fws.gov, Adele Mouakad <amouakad@gmail.com>, andrew.gabanic@duke-energy.com, David Ayer <dayerd@yahoo.com>, 4giffords@insightbb.com

Wheeling Bottoms: I met with Ramona Briggeman, Reclamation Biologist for the DNR. Steve Gifford was already on the site. The three of us walked back to the area where Least Tern activity was seen. We found one nest with 3 eggs and one nest with a single egg along with two recently hatched young chicks. The maximum count of birds was 23 adults. There are probably as many as 30 adults associated with the site. The nesting location seems to be mainly on the southeast corner of the pond.

Ash Pond: On the mainland there were 6 nests and 3 sets of chicks. There were a total of 8 chicks counted. The island had one nest and one set of 3 chicks. There were 25 to 30 adults.

SD: Site A had 2 nests, 4 chicks seen, and 10 adults. There was activity seen at the other 4 locations. Interestingly there were no White Pelicans.

TBS: There was no water and no Least Terns. There are a lot of small willow trees growing in the moat. There are weeds growing on the fence. The islands themselves have about 15% low vegetation cover.

CR: There were 2 nests on RI and 14 on TI. There were at least 6 groups of chicks all on TI. TI is starting to get a vegetation cover. This should help the chicks. There were about 60 adults present.

Andrew and I plan to hike the dike on Sunday. John Pike and I plan to check the river Monday using the airboat.

Chuck Mills

_____ Fwd: Wheeling Bottoms Least Terns; Fri 6/27/2014 3:08
PM _____

Hi,

Here are some pictures of the new interior least tern colony on the west end of the Refuge acquisition area. There were 23 adult terns counted in a short time this morning, 06/27/14, before the observers left the site to reduce disturbance. The terns are nesting on the southeast corner of what we refer to as Flat Lake which was created by Peabody Energy to serve as an incised basin (highwall lake) to eventually serve as a coal slurry sediment basin for the nearby Francisco underground mining operation.

This is the first confirmed nesting and hatching of interior least terns on the Patoka River NWR !

Bill

----- Forwarded message -----

From: <4giffords@insightbb.com>

Date: Fri, Jun 27, 2014 at 11:31 AM

Subject: Wheeling Bottoms Least Terns

To: Bill McCoy <bill_mccoy@fws.gov>

Cc: Heath Hamilton <heath_hamilton@fws.gov>, Charles Mills <ccmills@wowway.com>, Amy Kearns <akearns@dnr.in.gov>

Bill,

Following are some pics from this morning. Hope this helps!

<https://www.flickr.com/photos/steve-gifford/14333994198/in/photostream/>
<https://www.flickr.com/photos/steve-gifford/14333972089/in/photostream/>
<https://www.flickr.com/photos/steve-gifford/14520560645/in/photostream/>
<https://www.flickr.com/photos/steve-gifford/14334111017/in/photostream/>
<https://www.flickr.com/photos/steve-gifford/14334107177/in/photostream/>
<https://www.flickr.com/photos/steve-gifford/14333906690/in/photostream/>

Have a great weekend,
Steve

--

William McCoy, Refuge Manager

Patoka River NWR&MA

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